

WACHTELL, LIPTON, ROSEN & KATZ

51 WEST 52ND STREET
NEW YORK, N.Y. 10019-6150

DIRECT DIAL: (212) 403-1329
DIRECT FAX: (212) 403-2329
E-MAIL: WDSAVITT@WLRK.COM

October 4, 2024

Via ECF

The Honorable Katherine Polk Failla, U.S.D.J.
Thurgood Marshall United States Courthouse
40 Foley Square
New York, NY 10007

Re: *Securities and Exchange Commission v. Coinbase, Inc.
and Coinbase Global, Inc.*, 23 Civ. 4738 (KPF)

Dear Judge Failla:

We write to advise the Court that the SEC has lodged an appeal in the *Ripple* case, and to urge this Court to grant Coinbase's pending Motion to Certify Interlocutory Appeal Under 28 U.S.C. § 1292(b), Dkt. 109, so that the Second Circuit may have before it as complete a picture as possible in adjudicating the SEC's position respecting *Howey*'s application to secondary-market digital asset transactions.

On October 2, 2024, following entry of final judgment on August 7, 2024, the SEC filed a notice of appeal in *Ripple. SEC v. Ripple Labs, Inc.*, No. 20-cv-10832, Dkts. 974, 978 (S.D.N.Y.). The Second Circuit therefore will now review *Ripple*'s application of *Howey*, and, in particular, the *Ripple* court's conclusion that blind bid-ask digital asset transactions by an issuer over secondary exchanges were not investment contracts because they lacked certain features inherent in the contractual undertakings that Coinbase maintains are required by *Howey*. *See Ripple*, 2023 WL 4507900, at *11-12 (July 13, 2023). Although the SEC disputes it, *see* Dkt. 125 at 15, resolution of the principal issue likely to be raised on appeal in *Ripple* should entail careful consideration of the foundational question of law presented by this Court's March 27 Order: whether some obligation past the point of sale is required for any secondary-market transaction to involve an investment contract. *See* Dkts. 110, 128. By granting Coinbase's motion for interlocutory appeal, this Court would help ensure that the Second Circuit has before it a full account of the legal and practical implications of the SEC's litigating position—a position that the SEC acknowledged just weeks ago has sown “confusion.” *SEC v. Binance Holdings Ltd.*, No. 23-cv-1599, Dkt. 273-1 at 24 n.6 (D.D.C. Sept. 12, 2024).

The SEC has conceded, and now reconfirms by its appeal in *Ripple*, that the issues presented by *Howey*'s application to secondary-market digital asset transactions are of “industry-wide significance.” *Ripple*, Dkt. 915 at 1 (Sept. 8, 2023). Prompt and *complete* appellate review is urgently needed.

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Respectfully,

/s/ William Savitt

William Savitt

cc: All counsel of record